

## **AREA PLAN COMMISSION**

### **A Public Hearing To Hear The Comments And Concerns Of The Citizens Of Scott County Pertaining To The Proposed Replacement Zoning And Subdivision Control Ordinances**

**February 4, 2004**

The Scott County Area Planning Commission (APC) held a public hearing February 4, 2004 from 5:00 PM to 8:00 PM in the Circuit Court room on the second floor of the courthouse to hear the comments and concerns of the citizens of Scott County pertaining to the proposed replacement Zoning and Subdivision Control Ordinances. Members present were Tim Payne, Dale Hobbs, Charles Rose, Joe McGlothlin, Jim Boswell and Tom Springstun. Also present were John Knight, Executive Director, and Attorney Mike Carter. County Commissioners Mark Hays and Steve Meyer were present as was Mike White from the County Council. The media was represented by Marty Randall of the Scott County Journal. Also present were Lynn Robinson, Andrew Collings, Mac McBirde, Grover Stacey, Thomas Hearld, Frank Webster, Janie McCreary, Gary Green, Danny Murray, George Summers, Lois Enteman, Donald Entemam, Rudy Hamlin, Jeff Conder, Lisa Conder, Sheila Dunn Scull, Lynda Reams, Denise Thomas, Harvey Goodin, Mr. McNeely, and Jo Ann Knight. Note: Speakers are underlined and answers are marked by \*.

The Commission President, Tim Payne opened the hearing at 5:00 PM and addressed those assembled. He recounted the concerns stated by the public at the beginning of the update process, and spoke of the changes in the proposed documents. The expanded zoning classifications requested by the city were mentioned (R-3 Dense Multifamily, B-1 Neighborhood Business, B-2 General Business, B-3 Highway Business and I-1 Light Industrial) and explained.

He reminded the public that the ordinances had no effect on taxes and that rumors that permits would be required for yard sales or to plant or cut trees and flowers were false.

Mr. Payne reported that regulation of sexually oriented business is included in the zoning ordinance and the section on signs has been brought up-to-date.

He reiterated that the hearing was a forum for the public to state its concerns and for the Commission to listen to those comments and not a debate.

He thanked those involved in the process of updating the ordinances including Ms. Thomas and Ms. Randal for their contributions.

Members of the Commission were asked for comments as were members of the City Council and the County Commissioner in attendance.

Mr. Springstun rose to thank Mr. Payne for his leadership.

Mike Carter spoke briefly on the rules of procedure for the meeting and noted that all legal requirements concerning publication of public notices and posting of notices and agenda. He requested that a copy of the legal notice of the public hearing be made part of the record, as well as numerous news articles that had been written concerning the hearing; that a copy of the proposed ordinances be made a part of the record; that the record reflect that a copy of the proposed zoning and subdivision control ordinance had been made available to the public at the Plan Commission office as well as the Scott County Public Library and on the Scott County Government Web Site [WWW.scottcounty-in.gov](http://WWW.scottcounty-in.gov).

Mr. Carter asked if any written concerns had been received by the APC office. Mr. Knight reported that Mr. and Mrs. Conder had delivered written concerns dealing with solid waste facilities. Attorney Carter requested that the one written comment that had been received be made a part of the record  
\* Several suggestions on this topic are being incorporated as changes.

Mr. Carter mentioned that the APC would meet per its regular schedule on 11 February at 6:30 PM to hear cases on the agenda and to discuss necessary changes and recommending the draft ordinances to the City Council and County Commissioners. The public is invited to observe but this will not be another public hearing. He explained that the Plan Commission had only the authority to recommend favorably, unfavorably or with no recommendation to the City/County and that only those governmental bodies could enact the proposed ordinances. He added that consideration of the proposed ordinances by the City and County legislative bodies would also be at public meetings of those bodies and that the public could attend those meetings as well.

Mr. McBride volunteered that he was not notified until two days earlier and that the paper showed 5:00 PM and 7:00 PM as hearing times.

Mr. Payne stated that the hearing would extend to 7:00 PM to include those who might come in late.

Lynn Robinson was the first speaker. He questioned who the person of power is who is the driving force behind the update of the ordinances. He demanded an answer and Mr. Carter responded that the city and county's elected officials were ultimately in charge and Mr. Knight added that the many changes in Indiana law since the ordinances were last updated in 1974 made the update necessary.

Andrew Collings spoke next saying he was interested in eminent domain and change of venue issues and would table further remarks until he could read the 1000 series of IC36-7-4. \* The Indiana code that governs the Zoning and Subdivision Ordinances sets up layers of approval authority to prevent one person or agency to dictate the administration of land use policy. The Zoning Ordinance, for example, identifies permitted uses. These are land uses that the APC staff or director may approve. If what a property owner wants to build is larger or not in the list of permitted uses the staff or director must refer the matter to the Board of Zoning Appeals (BZA). This allows the request to be heard in a public meeting in which regular citizens hear both sides of the issue and weigh the concerns of neighbors in deciding if the request can be approved. Common sense is a big part of the consideration process but the Board is guided by seven standards that assure that the rights of area property owners and the public welfare are protected. If the property owner still feels that his/her request has not been justly decided the matter goes to the court system. IC 36-7-4-1000 series says in part that each person aggrieved by a decision of the board of zoning appeals or the legislative body may file with the circuit or superior court of the county in which the premises affected are located, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. No change of venue from the county in which the premises affected are located may be had in any cause arising under this section.

Likewise, some matters other than variances and conditional uses can be handled at the staff or director level. Matters that exceed their approval authority or actions they take that a property owner disputes are referred or

appealed to the APC for a public meeting and then to the City Council or County Commissioners depending on where the property is located. If the property owner still feels that his/her request has not been justly decided the matter goes to the court system. Change of venue is not mentioned in this regard.

The Indiana code states in IC36-7-4-1104. (a) As used in this section, "state agency" means all agencies, boards, commissions, departments, and institutions, including state educational institutions, of the state.

(b) ADVISORY.AREA. This chapter does not restrict or regulate (or authorize any political subdivision, legislative body, plan commission, or board of zoning appeals to restrict or regulate) the exercise of the power of eminent domain by the state or by any state agency or the use of property owned or occupied by the state or by any state agency.

*As added by Acts 1981, P.L.309, SEC.23*

In cases before the APC or BZA the Commission or Board Attorney has assured that no decision has been made that eliminates a property owners ability to use his/her land.

Mac McBride complained that the design standards contained in the Subdivision Control ordinance draft were too expensive for the people of Scott County. He suggested that there should be no design standards. \* Design standards in the proposed Subdivision Ordinance are of two types, required which have the word "shall" and optional using "may" "will" or "when". "Shall" is used when the standard is a documented requirement or considered to be a necessity for a desired result. In standards where optional language is used, the application of the standard is meant to be flexible and in relation to the characteristics of the development such as the market price or density of proposed dwellings. Roadway width in subdivisions has been reduced to 20 feet.

Grover Stacey also questioned who the person of power was who was the driving force behind the update of the ordinances. He complained that promises of advance notification were not kept. Mr. Payne reminded Mr. Stacey that legal notice was placed in the newspaper which ran January 23 and again on the 30<sup>th</sup>. Mr. Stacey said he had the same concerns about design standards stated by Mr. McBride. \* See previous answers.

Thomas Herald stated his concern that land use ordinances might impact his children's freedom to use the land. He questioned the assertion that state code had changes requiring an update of ordinances. Mr. Herald finished by declaring his intention to run for County Council and asked for the people's votes.

Frank Webster suggested that beautification of Scott County be left to the Beautification Committee. Mr. Payne reminded him that beautification was not a planning and zoning matter. Mr. Webster stated that many pets were being killed at the pound since low income housing was in short supply. He said that pets were turned into the pound by people moving into apartments.

Janie McCreary gave thanks to God and asked if a permit would be required for planting shrubs and flowers. Mr. Payne assured her that that rumor was false. She said she lived near or on a hill that needed a speed limit and a sign. She reported that traffic had killed all of her kittens. She stated she was in favor of less rules and felt a beautification committee was needed and that she would serve. She is in favor of everyone cleaning up the county.

Gary Green declined to speak when called stating that this was uncommon for him.

Danny Murray had questions about the revenue flow within the Area Plan Commission. He held that since the fees for Improvement Location Permits do not match the total cost of operating the office the APC was creating a deficit. He was informed that the number of permits was not expected to increase nor would collections or expenses connected with the proposed ordinances. The processing of permits is a very minor part of the work of the APC office and fees are lower than in nearby counties. He complained that due to ordinance 2002-1 he could not fully develop his land. Mr. Knight invited him to come to the APC office to work out a remedy anytime on 5 February. \* Mr. Murray will be able to request a variance for his land. He also brought up good points from a business man's point of view that deal with the Comprehensive Plan.

George Summers wanted to know if a permit will be required to plant a tree or shrub. He asked where to obtain a copy of the zoning ordinance and was asked to visit the APC office for that. \* See previous answers.

Lois Enteman asked if property would be rezoned or if the APC would have to meet on each case. \* Approval of rezoning is to be recommended by the APC and approved or denied by the City Council or County Commissioners.

Rudy Hamlin told of his efforts to eliminate a neighboring junkyard and to stop raw sewage discharge on Slate Ford Road. \* Mr. Carter offered that both the property maintenance and abandoned vehicle issues were being reviewed and ordinances updated.

Jeff Conder declined to speak but mentioned that his concerns had been delivered to the APC office. \* Changes have been made to strengthen the tests for a conditional use using language from the old ordinance. A needs assessment from the solid waste management district is included as an application requirement when requesting a waste disposal overlay district.

Sheila Dunn Scull asked why a building permit and certificate of Occupancy is required in the new ordinance. She questioned the limitation placed on home based business of no employees and the limit on permitted private kennel size to 4 dogs (definition). She expressed concern over the policy of maintaining confidentiality of persons reporting a zoning violation. She listed among other concerns that private influence was forcing individual values on the whole county. She stated that she doesn't understand why ordinances need to be updated. Ms. Scull ended her presentation with a hope that the current APC and planning office would not repeat history. \* The ordinance is written to indicate first what is permitted in each land use zone. Limitations are considered when it is reasonably expected that at some point the land use will become a nuisance to neighbors or the community. An ordinance is a local law and in the case of land use law when the ordinance does not cover all foreseeable situations a property owner seeking an exception to the requirements or limitations of the ordinance may request a variance. This mechanism allows the petitioner and effected neighbors to present their views before the Board of Zoning Appeals. For how the BZA works see the question of Mr. Collings and the answer provided.

Changes to specify that a home based business may include 1 employee and a differentiation between kennels based on the private or commercial nature of the kennel will be substituted for a limit based on size will be made to the proposed ordinance subject to APC approval.

Indiana code 36-7-4-401 states that the APC will establish uniform rules and procedures for handling investigations and hearings. Though ‘Complaints of Violation’ may come from many sources inside and outside the county they are only considered as tips that deserve a discrete investigation. If the Executive Director investigates and is satisfied the property is not in compliance with the Zoning Ordinance a letter will be sent to the property owner on behalf of the APC. The matter is totally between the APC and the property owner because the offense, if there is one, is solely against the County and its ordinance. The notification letter is polite and invites the property owner into the APC office to discuss and arrive at a remedy.

Building permit and certificates of occupancy issues are referenced briefly in the Zoning Ordinance but are the business of the Building Commissioner and are covered by another Indiana code and local ordinance.

Lynda Reams asked what the setback requirement is for a portable on-site sign for her business. She asked if limits would be placed on storage sheds in subdivisions and mobile home parks. Mr. Knight said that the zoning ordinance only dealt with setbacks for prefab or portable storage sheds and that park rules governed park residents. She was asked to contact Mr. Knight about the sign.

Mike White came forward to say he was very pleased with the work of the APC and in this hearing in light of past hearings. At this point someone shouted they just wanted the process finished.

Denise Thomas pointed out a typographical error on page 54 and requested that two very old ordinances on mobile homes be reviewed for agreement with proposed text. \* The errors were corrected on the spot and the old ordinances will be repealed with the adoption of the proposed ordinances.

Harvey Goodin reminded the assemblage that Scott County leads the state in welfare. He said he did not see how the ordinance could be enforced. He complained that keeping the identity of a person reporting a zoning violation confidential is illegal. He pointed out that ordinances were requiring certified professionals (engineers and soil scientists) to to accomplish tests or complete reports and designs. He asked if an engineering firm had written the ordinance. Mr. Goodin finished by predicting that people will not be willing to obtain a soil test by a soil scientist. \* These issues are under review. As cases have been brought against counties and states concerning

oversights of employees or appointees these governments have limited their exposure for liability by including in statutes the requirement for certified or registered professionals to perform certain tasks. This response limits the expenses of these governments avoids tax increases but does increase the processing time and cost of land development. In reviewing the proposed ordinance the requirements for work to be done by registered or certified professionals appears to be appropriate. If experience indicates otherwise we will amend the ordinance.

Mr. Payne called a recess or break when all who wished to speak had done so and reopened the hearing at 07:00 PM. At 7:00 PM he made introductory comments similar to those at the beginning of the hearing and introduced the members of the APC, City Council and County Commissioners present. He asked if any of the three new arrivals wished to address the hearing. The new arrivals declined to speak. Another request for speakers was made after a few minutes with no one coming forward.

The hearing was closed at 7:15 PM and the public thanked for their input.

John R. Knight  
Executive Director

Tim Payne  
President